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SECOND DIVISION

[A.M. No. CA-04-40 (formerly A.M. OCA IPI No. 04-69-CA-J), August 13, 2004]

ATTY. REX J.M.A. FERNANDEZ, COMPLAINANT, VS. COURT OF APPEALS ASSOCIATE JUSTICES EUBOLO G. VERZOLA, MARTIN S. VILLARAMA, JR., AND MARIO L. GUARIÑA III, RESPONDENTS.

R E S O L U T I O N

CALLEJO, SR., J.:

Before the Court is a "Petition for Review on Certiorari with Administrative Complaint" for grave abuse of discretion, grave misconduct, grave oppression and gross ignorance of the law filed by Atty. Rex J.M.A. Fernandez against Court of Appeals Associate Justices Eubolo G. Verzola, Martin S. Villarama, Jr. and Mario L. Guariña III, docketed as G.R. No. 160174.

The main case seeks to annul the Decision of the Court of Appeals dated June 19, 2003, and the Resolution denying the motion for reconsideration dated September 26, 2003. The CA decision declares petitioner Fr. Francisco Silva, National Electrification Administration (NEA) Administrator, to have issued illegal orders dismissing therein respondent Atty. Leovigildo T. Mationg, former general manager of Aklan Electric Cooperative, Inc. (AKELCO), and orders such petitioner to reinstate him.

The allegations of Atty. Fernandez against the respondent Justices are summarized by the Office of the Court Administrator[1] as follows:

1. That he filed the instant petition before the Honorable Supreme Court seeking its power to reverse the decision of the Court of Appeals and to declare that said decision is a fruit of corruption;[2]

2. That the CA decision is patently and obviously a fruit of corruption without even considering the backdrop of the whole case but by mere perusal of the decision;[3]

3. That the justices who penned and concurred with the decision relied on the premise that there being no direct evidence of corruption, the Supreme Court would merely declare it, at most, an error of judgment;[4]

4. That, although in this case, particular and specific acts of graft and corruption are not visible and patent, telltale (sic) signs and collateral circumstances of acts of graft and corruption must be declared to be sufficient evidence against such acts;[5]

5. That complainant stands by his analysis of corruption that the decision in itself is evidence of corruption per doctrine *res ipsa loquitur*;[6]

6. That the acts of the justices of not allowing some persons due process and in grossly and gravely ignoring basic legal rights and procedures, gave undue advantage to respondent Mationg;[7]

7. That giving undue advantage to respondent Mationg caused damage, injuries and prejudice to petitioner, the NEA Board of Administrators, the Board of Directors of AKELCO, the individual members of the general assembly, and even to the President, in violation of Section 3 (e) of Rep. Act No. 3019 and Rep. Act No. 6713.[8]

The complainant prayed that the Court remove the respondent Associate Justices as Justices of the Court of Appeals and that the penalty of disbarment from the practice of law be imposed on them.[9]

In a Resolution dated January 14, 2004, the Court resolved to docket the case as an informal preliminary inquiry and to refer the same to the Office of the Court Administrator (OCA) for appropriate action.

The respondent Justices submitted their respective comments on the complaint and denied the charges. Justice Villarama, Jr. averred that, to merit disciplinary sanction, the error or mistake of a judge must be gross and patent, malicious, deliberate or in bad faith,[10] and pointed out that the complainant failed to present any concrete evidence to substantiate his false, malicious and unfair statements.[11] Justice Guariña claimed that the complaint is premature and lacks any cause of action, and is *sub judice*, involving as it does the question of whether the CA decision is correct or not, an issue which the Court will later decide on.[12] Justice Verzola, on the other hand, argued that the inclusion of an administrative complaint for alleged acts attendant to the rendition of a decision subject of a petition for review on certiorari, does not conform to A.M. No. 01-8-10-SC which took effect on September 11, 2001. [13]

The OCA, thereafter, recommended the dismissal of the instant administrative complaint and that the same be stricken off from the petition in G.R. No. 160174.

We agree.

As a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability – civil, criminal or administrative, for any of his official acts, no matter how erroneous, as long as he acts in good faith.[14] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[15]

Indeed, the filing of an administrative complaint against a judge is not an appropriate remedy where judicial recourse is still available. In the absence of fraud,

malice or dishonesty in rendering the assailed decision or order as in the case at bar, the remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction.[16] As such, an administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by his erroneous order or judgment.[17]

More importantly, in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Even in administrative cases, if a respondent judge should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.[18] Charges based on mere suspicion and speculation cannot be given credence. Hence, when the complainant fails to substantiate a claim of corruption and bribery, relying merely on conjectures and suppositions, the administrative complaint must be dismissed for lack of merit.[19] As stated by the OCA in its Report and Recommendation:

> … Complainant admitted that he has no direct evidence of corruption committed by respondent justices. He stated that in this case, particular and specific acts of corruption are not visible and patent. His reasoning that the decision itself is evidence of corruption per doctrine of *res ipsa loquitur* is untenable. Rendering an erroneous or baseless judgment, in itself, is not sufficient to justify the judge's dismissal from the service, there must be proof that such judgment was rendered with malice, corrupt practice, improper consideration or bad faith. … Thus, although the decision may seem so erroneous as to raise doubt concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge, … and where the charge includes an alleged violation of Section 3(e) of RA 3019, as in the instant case, the quantum of proof required to hold respondent judge guilty for such violation is proof beyond reasonable doubt.[20]

The complainant would do well to remember that as a member of the bar, he is bound by the Code of Professional Responsibility. Canon 11 thereof enjoins lawyers to observe and maintain the respect due to courts and to judicial officers and should insist on similar conduct by others. Thus, it has been held that though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions have no place in the dignity of judicial forum.[21] Civility among members of the legal profession is a treasured tradition that must at no time be lost to it.[22] Rule 11.04 of the Code goes further as to oblige lawyers to *refrain from attributing to a Judge motives not supported by the record or have no materiality to the case*.

In fact, as pointed out by Justice Verzola, an administrative complaint against judges and Justices of the Court of Appeals, if instituted by any person, must be verified and duly supported by affidavits of persons who have personal knowledge of the facts alleged therein, or by documents substantiating such allegations.[23] Hence, the inclusion of such complaint in a petition for review on certiorari before the Court, *without even alleging the specific acts and omissions violated by the respondents*, is highly irregular and improper.